

2020 Regular Session

HOUSE BILL NO. 568

BY REPRESENTATIVES JAMES AND LANDRY

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides with respect to in forma pauperis proceedings

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 5183(A)(introductory paragraph)
3 and (1) and (B) and 5185(A) and (B), relative to proceeding in forma pauperis; to
4 provide with respect to applications to proceed in forma pauperis; to provide for the
5 rights of parties proceeding in forma pauperis; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Articles 5183(A)(introductory paragraph) and
8 (1) and (B) and 5185(A) and (B) are hereby amended and reenacted to read as follows:

9 Art. 5183. Affidavits of poverty; documentation; order

10 A. A person who wishes to exercise the privilege granted in this Chapter
11 shall apply to the court for permission to do so in his first pleading, or in an ex parte
12 written motion if requested later, to which ~~he~~ the applicant shall annex the
13 following:

14 (1) His affidavit that he is unable to pay the costs of court in advance, or as
15 they accrue, or to furnish security therefor, because of his poverty and lack of means,
16 accompanied by any supporting documentation; ~~and~~.

17 * * *

18 B.(1) ~~When the~~ Upon the filing of the completed application and supporting
19 affidavits ~~are presented to the court, it, the court~~ shall inquire into the facts, and if

1 satisfied that the applicant is entitled to the privilege granted in this Chapter it shall
2 render an order permitting that does one of the following:

3 (a) Grants the application and allows the applicant to litigate; or to continue
4 the litigation ~~of, the action or proceeding~~ without paying the costs in advance, ~~or as~~
5 ~~they accrue, or furnishing security therefor.~~

6 (b) Denies the application with written reasons for such denial.

7 (c) Sets the matter for a contradictory hearing.

8 (2) The submission by the applicant of supporting documentation that the
9 applicant is receiving public assistance benefits or that the applicant's income is less
10 than or equal to one hundred twenty-five percent of the federal poverty level shall
11 create a rebuttable presumption that the applicant is entitled to the privilege granted
12 in this Chapter. If the court finds that the presumption is rebutted, it shall provide
13 written reasons for its finding.

14 (3) The court may reconsider ~~such an~~ its original order granting the
15 application on its own motion at any time in a contradictory hearing.

16 Comments - 2020

17 Paragraph B of this Article has been amended to require the court to do one
18 of three things after a person has filed a completed application to proceed in forma
19 pauperis with the requisite supporting affidavits: (1) grant the application and allow
20 the applicant to proceed in forma pauperis, (2) deny the application and provide
21 written reasons for such denial, or (3) set the matter for a contradictory hearing. The
22 requirement under this provision that written reasons be provided by the court upon
23 the denial of an application is intended to provide the applicant with additional
24 information necessary to, for example, correct a deficiency in the application. The
25 form and contents of these written reasons are left to the discretion of the court.

26 * * *

27 Art. 5185. Rights of party permitted to litigate without payment of costs

28 A. When an order of court permits a party to litigate without the payment of
29 costs until this order is rescinded or expires, ~~he~~ the party is entitled to:

30 (1) All services required by law of a sheriff, clerk of court, court reporter,
31 notary, or other public officer in, or in connection with, the judicial proceeding,
32 including but not limited to the filing of pleadings and exhibits, the issuance of
33 certificates, the certification of copies of notarial acts and public records, the

1 issuance and service of subpoenas and process, the taking and transcribing of
2 testimony, and the preparation of a record of appeal;

3 (2)(a) The right to the compulsory attendance of not more than six witnesses
4 for the purpose of testifying, either in court or by deposition, without the payment
5 of the fees, mileage, and other expenses allowed these witnesses by law. If a party
6 has been permitted to litigate without full payment of costs and is unable to pay for
7 witnesses desired by him, in addition to those summoned at the expense of the
8 parish, ~~he~~ the party shall make a sworn application to the court for the additional
9 witnesses. The application ~~must~~ shall allege that the testimony is relevant and
10 material and not cumulative and that the defendant cannot safely go to trial without
11 it. A short summary of the expected testimony of each witness shall be attached to
12 the application.

13 (b) The court shall make a private inquiry into the facts and, if satisfied that
14 the party is entitled to the privilege, shall render an order permitting the party to
15 subpoena additional witnesses at the expense of the parish. If the application is
16 denied, the court shall state the reasons for the denial in writing, which shall become
17 part of the record.

18 (3) The right to a trial by jury and to the services of jurors, when allowed by
19 law and applied for timely; ~~and~~.

20 (4) The right to have any judgment or order filed and to receive one certified
21 copy of the judgment or order.

22 (5) The right to a devolutive appeal, and to apply for supervisory writs.

23 B. ~~He~~ The party is not entitled to a suspensive appeal, or to an order or
24 judgment required by law to be conditioned on his furnishing security other than for
25 costs, unless ~~he~~ the party furnishes the necessary security therefor.

26 * * *

27 Comments - 2020

28 Paragraph (A)(4) of this Article has been added to provide an applicant
29 proceeding in forma pauperis with the right to have a judgment or order filed and to
30 receive a certified copy of such judgment or order, regardless of whether the costs
31 of court have been paid. See Carline v. Carline, 644 So. 2d 835 (La. App. 1 Cir.

1 1994) (holding that it was improper to require a plaintiff proceeding in forma
2 pauperis to pay court costs before providing a certified copy of the judgment
3 rendered in the proceedings).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 568 Original

2020 Regular Session

James

Abstract: Provides with respect to in forma pauperis proceedings.

Present law (C.C.P. Art. 5183) provides for the filing of an application to proceed in forma pauperis and permits the court to grant the application and allow the applicant to proceed without the payment of costs in advance.

Proposed law retains present law but requires the court to do one of three things upon the filing of an application to proceed in forma pauperis: (1) grant the application, (2) deny the application and provide written reasons for the denial, or (3) set the matter for a contradictory hearing.

Present law (C.C.P. Art. 5183) also sets forth a rebuttable presumption that the applicant is entitled to proceed in forma pauperis if the applicant is receiving public assistance benefits or if the applicant's income is less than or equal to 125% of the federal poverty level.

Proposed law retains present law and further requires a court that finds that this presumption is rebutted to provide written reasons for its finding.

Present law (C.C.P. Art. 5185) sets forth the rights of a party who has been permitted to litigate without the payment of costs in advance until the order granting the application to proceed in forma pauperis is rescinded.

Proposed law retains present law but recognizes the possibility that the order granting the application to proceed in forma pauperis may expire in accordance with local court rules. Proposed law also gives the party proceeding in forma pauperis the right to have a judgment or order filed and to receive a certified copy of such judgment or order.

(Amends C.C.P. Arts. 5183(A)(intro. para.) and (1) and (B) and 5185(A) and (B))